

## REMARKS

Claims 1-78 are pending in the application. Claims 1-16, 24-37, and 51-55 are withdrawn from consideration. Claims 17-23, 38-50, and 56-78 are rejected in this Office Action.

Claims 1-16, 18-37, 42-55, and 66-78 are canceled.

### Rejection Under 35 U.S.C. §103

Claims 1-20 are rejected under 35 U.S.C. §103 as being obvious over Drechsler et. al. (US Pat. 6,074,654) in view of Manufacturing Chemist, ExxonMobile Chemical Technical Data, and Litton (US Pat. 5,970,989).

Claims 1-16, 18-20 are canceled.

The legal conclusion, that a claim is obvious within § 103(a), depends on at least four underlying factual issues: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations. *Id.*, citing *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966).

The Examiner states that Dreschler discloses a method of enhancing the gloss, shine, and feel of lip composition by [application of] a complimentary product, known as "overcoat" or "topcoat", over the film formed after application of a transfer-resistant lip composition. The Examiner states that the reference also teaches that the overcoating composition can be liquid or solid and include "any that are commercially available or to be developed, provided that aggregate of the matereials comprising the overcoat does not significantly disrupt" the film-forming composition.

Applicants have amended claim 17 to, " A lip cosmetic for use in combination with an anhydrous, pigmented, transfer resistant film forming, cross-linked resinous silicone composition comprising a non-reactive wetting agent having affinity to, the

composition, said wetting agent being a liquid polymeric hydrocarbon having a number average molecular weight greater than about 650 devoid of non-volatile silicone oils, and wherein the wetting agent overcoat composition flows smoothly over the composition."

The Examiner admits that Dreschler fails to teach using a liquid polymeric hydrocarbon with number average greater than about 650 to make the overcoating composition.

Therefore, Dreschler fails to disclose, discuss, or teach applicant's invention and must be removed as a rejection.

The Examiner states that Manufacturing Chemist teaches that poly- $\alpha$ -olefins (notably polydecene) are "popular as oil-free emollients", which are used as "pigment wetting and dispersing aids and recommended as a replacement for mineral oil". The Examiner states the teaching here would have motivated a skilled artisan to exclude mineral oil.

The Examiner states that the reference teaches that the products under PureSyn trademark from Mobil Chemicals and Arlamol brand by Uniqema are available in different viscosity grades and that the refractive index of the wetting agent is a physical property of the polydecence.

Applicants have canceled claims 42, 76 and 77 and therefore the rejection under Manufacturing Chemist must be withdrawn.

The Examiner states ExxonMobil Chemical teaches that polyalphaolefins are "premium fluids such as mineral oils, petrolatum, and polybutene"....applicable in personal care formulations including cosmetics.

The basic factual inquiries of *Graham v John Deere Co.*, require objective evidence relevant to the issue of obviousness must be evaluated by Office personnel. Such evidence sometimes referred to as secondary considerations, may include evidence of commercial success, long-felt but unsolved needs, failure of others, and

unexpected results. (Federal Register/ Vol. 72, No. 195, Wednesday, October 10, 2007/notices).

In Example 2 of the specification [paragraph 0108] applicants performed extensive tests to demonstrate the desired properties of color transfer and compatibility with the transfer resistant film using a variety of hydrocarbons, including polybutenes at a variety of molecular weights.

The results of the tests show that only polybutenes having a molecular weight greater than 650 displayed the desired characteristics of wetting agent reactive and compatible with transfer resistant film. ExxonMobil teaches that polybutenes be used in a formulation and does not suggest that polybutenes alone would provide the unexpected results that applicants were seeking. Only through a series of experiments found in Example 2 did the applicant's discover that liquid polymeric hydrocarbons having an average molecular weight greater than 650 would perform without further formulation as the desired glossy coat.

The evidence presented in Example 2 is a secondary consideration that must be considered by the Examiner as reiterated by the Supreme Court in *KSR International Co. v. Teleflex Inc.*

The Examiner states that Litton teaches cosmetic products designed to be used together are well known in the art.

Applicant has amended the claims to a lip cosmetic composition being a liquid polymeric hydrocarbon having a number average molecular weight greater than 650.

Litton therefore is no longer applicable to the amended claims and must be removed as a rejection.

The Examiner rejects claims 17-19, 21, 22, 38-44, 46-50, 56, 57, 76, and 77 under 35 USC 103(a) as being unpatentable over Dreschler in view of Finkenaur et al. (US 4,935,228), Amoco Technical Data and Litton.

Claims 18-19, 21, 22, 42-44, 46-50, 76, and 77 have been canceled.

The Examiner raises no new rejections under Dreschler and Litton which are discussed above.

Applicants request that for the reasons stated above Dreschler and Litton be removed as a grounds for rejection.

The Examiner admits that Finkenaur fails to teach the number average molecular weight of the polybutenes.

As reasoned above, applicants performed extensive testing to obtain the unexpected result that a number average molecular weight of >650 is necessary for the polybutenes to perform in the desired manner.

Finkenaur does not teach the polybutenes of this invention and must be removed as a reference.

The Examiner states that the Amoco Technical Data teaches polybutene Indopol H-100 having number average molecular weight 940 and that the polybutene can be used in personal care products.

In Example 2 of the specification [paragraph 0108] applicants performed extensive tests to demonstrate the desired properties of color transfer and compatibility with the transfer resistant film using a variety of hydrocarbons, including polybutenes at a variety of molecular weights.

The results of the tests show that only polybutenes having a molecular weight greater than 650 displayed the desired characteristics of wetting agent reactive and compatible with transfer resistant film. Amoco Technical Data teaches that polybutenes be used in a formulation and does not suggest that polybutenes alone would provide the unexpected results that applicants were seeking. Only through a series of experiments found in Example 2 did the applicant's discover that liquid polymeric hydrocarbons having an average molecular weight greater than 650 would perform without further formulation as a glossy coat.

The evidence presented in Example 2 is a secondary consideration that must be considered by the Examiner as reiterated by the Supreme Court in *KSR International Co. v. Teleflex Inc.*

The Examiner rejects claim 20 under 35 USC 103(a) as being unpatentable over Dreschler in view of Finkenaur et al. (US 4,935,228), Amoco Technical Data and Litton, further in view of Nichols (US 6,509,009).

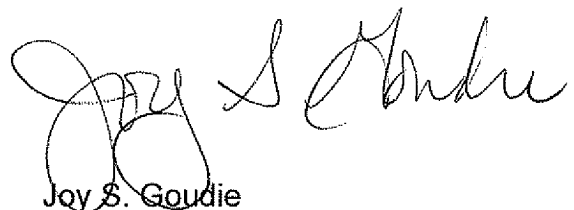
Claim 20 has been canceled and therefore this rejection must be removed.

The Examiner rejects claim 45 under 35 USC 103(a) as being unpatentable over Dreschler in view of Finkenaur et al. (US 4,935,228), Amoco Technical Data and Litton in view of Chadfield et al. (US 3,871,543).

Claim 45 has been canceled and therefore this rejection must be removed.

It is applicants position that the pending amended claims all contain limitations not found in any of the references and that the Examiner consider that this application is ready for allowance.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joy S. Goudie". The signature is fluid and cursive, with the first name "Joy" being particularly prominent.

Joy S. Goudie  
Attorney for Applicants  
Reg. No. 48,146  
Revlon Consumer Products Corporation  
237 Park Avenue  
New York, New York 10017  
(212) 527-5647